

REMARKS

Favorable reconsideration of the present application is respectfully requested.

Claims 1, 3, 6-9, 13-14 and 23-25 are active in the application.

Several of the claims have been amended to clarify the antecedent basis for certain terms therein. The scope of the claims has not been altered.

All of the claims have been rejected under 35 U.S.C. § 103 as being obvious over Ehrman in view of the newly cited U.S. patent 6,696,981 (Hashimoto). The Examiner there took the position that Ehrman discloses all of the claimed features except for a detector that detects that a vehicle has left or returned to a base station, but that this would have been obvious in view of Hashimoto. This is respectfully traversed since the references also fail to disclose features including means **responsive to a signal from the detector means** that the construction machine has returned to the base station for transmitting the operating information read from the storage means to the first receiving device.

Ehrman and Hashimoto disclose automated automobile rental systems. Initially Applicants wish to again point out that all of the claims include “means plus function” limitations whose functions recite a construction machine, e.g., “detector means for detecting that the construction machine has left the base station and for detecting that the construction machine has returned to the base station.” *Therefore under 35 U.S.C. § 112, ¶6, a reference allegedly teaching this claim feature must disclose the exact function of detecting a construction machine.* MPEP § 2182 (“Both before and after *Donaldson*, the application of a prior art reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim”). Ehrman and Hashimoto are instead directed to automobile rental systems and do not disclose the detection of construction machines.

The Examiner has stated in paragraph 5 of the Office action that “arguments that a reference is non-analogous are not supported when the reference is applied in a 102 rejection.” *However, this evidences a misunderstanding of the aforementioned failure of the prior art.* The prior art fails to anticipate the claims or to present a *prima facie* case of obviousness because it fails to teach the claimed function of a means plus function limitation, not because of any non-analogousness. **Means for detecting an automobile is not a means for detecting a construction machine – it does not perform the exact claimed function.** For this reason alone, the claims define over this prior art.

Additionally, as is described in paragraph [0029] of Ehrman:

When the vehicle is returned to a rental lot ... *and comes within transmission range* from outside of the rental lot, the transmitter/receiver within the vehicle transmits the stored information of odometer reading, fuel level, the correlation identification of car and driver and the exact time of return. (Emphasis added).

Thus the transmission of the stored vehicle information in Ehrman is not responsive to the detection of the vehicle but is instead responsive to the vehicle transmitter coming within range of the receiver in the base station. This represents another difference over Ehrman.

Nor is this further shortcoming of Ehrman overcome by Hashimoto. Hashimoto detects the return of a shared vehicle to a port. But it further teaches that this is done only to confirm the return of the vehicle (col. 2, lines 23-29; col. 3, lines 7-19). **It does not teach using the detection of the vehicle to trigger the transmission of operating data from the vehicle to the port.** Therefore, Hashimoto could not teach or suggest that the vehicle data transmission in Ehrman should instead be triggered by the detected return of the vehicle by the detector. Instead, any system resulting from a combination of the teachings of Ehrman and Hashimoto which might have been obvious to those skilled in the art could include the detection of the returning vehicle, but would not use this detection to trigger the transmission of operating information from the vehicle since this is not taught by either of the references.

The claims have also been rejected under 35 U.S.C. § 103 as being obvious over Imanishi et al. (of record) in view of Hashimoto. Imanishi et al. discloses an information management controller on a construction machine that stores work volume and other vehicle data and transmits the data to a monitoring station via a wireless communication line 14 (col. 8, lines 19-22; col. 22, lines 11-18). There is no indication that the transmission is performed using a wireless radio having a limited range, and so there is no need to detect the return of the machine to a base station and to transmit the data in response to such a detection by using the wireless radio having a limited range.

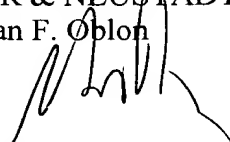
Hashimoto. was again cited to teach a detector for the return of the vehicle. However, as already explained Hashimoto. detects the return of a shared vehicle to a port in order to confirm the return of the vehicle. **It does not teach using the detection of the vehicle to trigger the transmission of data from the vehicle and so could not teach or suggest that the vehicle data transmission in Imanishi et al. should be triggered by the detected return of the vehicle by the detector.** The claims therefore define over any combination of the above references.

The claims have also been rejected as being obvious over the U.S. patent to Yamamoto '594 in view of Hashimoto. Yamamoto, like Imanishi et al., discloses transmitting construction vehicle data to a monitoring station. However, like Imanishi et al., it lacks a description that the transmission is performed using a wireless radio having a limited range or detection of the return of the machine to a base station and transmission of the data in response to such detection using the wireless radio having a limited range. The claims therefore define over any combination of the above references.

Applicant believes that the present application is in a condition for allowance and respectfully solicits an early Notice of Allowability.

Respectfully submitted,

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